

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES EUGENE WALKER,

Plaintiff,

v.

BERRIEN COUNTY JAIL, et al..

Defendants.

CASE No. 1:19-CV-722

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 36) and Defendant Officers' Objections (ECF No. 37). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to a Report and Recommendation, "[t]he district judge . . . as a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; Defendants' objections; and Defendants' Motion for Leave to File Affidavits.

The Magistrate Judge recommends granting Plaintiff's Motion to Deny Substitution of Exhibit 4 (ECF No. 30) and denying Defendants' Motion for Summary Judgment (ECF No. 21).

On the record presented to the Magistrate Judge, the Court agrees the defense failed to carry its Rule 56 burden. Defendants now attempt to meet the burden by submitting substantive factual affidavits from each of the officers and asking this Court to grant their motion for belated consideration (ECF No. 38). That motion is **DENIED**. Even during a pandemic, moving parties need to follow the rules. A party cannot sandbag the Court and an opposing party by submitting critical materials after the Magistrate Judge submits his or her Report and Recommendation. The record presented to the Magistrate Judge plainly failed to establish the absence of a genuine issue of material fact entitling Defendants to judgment as a matter of law.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 36) is approved and adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion to Deny Substitution of Exhibit 4 (ECF No. 30) is **GRANTED**.

IT IS FURTHER ORDERED that Defendants' Motion for Leave to File Affidavits (ECF No. 38) is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 21) is **DENIED**. This does not prevent Defendants from filing a new Rule 56 motion with appropriate supporting materials, if CMO deadlines permit it.

Dated: February 25, 2021

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE